

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE	)	MDL No. 1456
LITIGATION	)	Civil Action No. 01-12257-PBS
_____	)	Subcategory Case No. 03-10643
)	
THIS DOCUMENT RELATES TO:	)	Judge Patti B. Saris
)	
<i>The City of New York v. Abbott Labs., et al.</i>)	
(S.D.N.Y. No. 04-CV-06054))	
)	
<i>County of Nassau v. Abbott Labs., et al.</i>)	
(E.D.N.Y. No. 04-CV-05126))	
)	
and other cases listed on the following page)	
_____)	

**STIPULATION REGARDING THE
NEW YORK EPIC PROGRAM'S RECEIPT OF AMP DATA**

THIS DOCUMENT RELATES TO:	)	<i>County of Herkimer v. Abbott Labs., et al.</i>)
<i>County of Westchester v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00415))
(S.D.N.Y. No. 03-CV-6178)	)	<i>County of Oneida v. Abbott Labs., et al.</i>)
<i>County of Rockland v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00489))
(S.D.N.Y. No. 03-CV-7055)	)	<i>County of Fulton v. Abbott Labs., et al.</i>)
<i>County of Putnam v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00519))
(S.D.N.Y. No. 05-CV-04740)	)	<i>County of St. Lawrence v. Abbott Labs., et al.</i>)
<i>County of Dutchess v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00479))
(S.D.N.Y. No. 05-CV-06458)	)	<i>County of Jefferson v. Abbott Labs., et al.</i>)
<i>County of Orange v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00715))
(S.D.N.Y. Case No. 07-CV-2777)	)	<i>County of Lewis v. Abbott Labs., et al.</i>)
<i>County of Washington v. Abbott Labs., et al.</i>	)	(N.D.N.Y. No. 05-CV-00839))
(N.D.N.Y. No. 05-CV-00408)	)	<i>County of Chautauqua v. Abbott Labs., et al.</i>)
<i>County of Rensselaer v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06204))
(N.D.N.Y. No. 05-CV-00422)	)	<i>County of Allegany v. Abbott Labs., et al.</i>)
<i>County of Albany v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06231))
(N.D.N.Y. No. 05-CV-00425)	)	<i>County of Cattaraugus v. Abbott Labs., et al.</i>)
<i>County of Warren v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06242))
(N.D.N.Y. No. 05-CV-00468)	)	<i>County of Genesee v. Abbott Labs., et al.</i>)
<i>County of Greene v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06206))
(N.D.N.Y. No. 05-CV-00474)	)	<i>County of Wayne v. Abbott Labs., et al.</i>)
<i>County of Saratoga v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06138))
(N.D.N.Y. No. 05-CV-00478)	)	<i>County of Monroe v. Abbott Labs., et al.</i>)
<i>County of Columbia v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06148))
(N.D.N.Y. No. 05-CV-00867)	)	<i>County of Yates v. Abbott Labs., et al.</i>)
<i>Essex County v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06172))
(N.D.N.Y. No. 05-CV-00878)	)	<i>County of Niagara v. Abbott Labs., et al.</i>)
<i>County of Chenango v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06296))
(N.D.N.Y. No. 05-CV-00354)	)	<i>County of Seneca v. Abbott Labs., et al.</i>)
<i>County of Broome v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06370))
(N.D.N.Y. No. 05-CV-00456)	)	<i>County of Orleans v. Abbott Labs., et al.</i>)
<i>County of Onondaga v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06371))
(N.D.N.Y. No. 05-CV-00088)	)	<i>County of Ontario v. Abbott Labs., et al.</i>)
<i>County of Tompkins v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06373))
(N.D.N.Y. No. 05-CV-00397)	)	<i>County of Schuyler v. Abbott Labs., et al.</i>)
<i>County of Cayuga v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06387))
(N.D.N.Y. No. 05-CV-00423)	)	<i>County of Chemung v. Abbott Labs., et al.</i>)
<i>County of Madison v. Abbott Labs., et al.</i>	)	(W.D.N.Y. No. 05-CV-06744))
(N.D.N.Y. No. 05-CV-00714)	)	<i>County of Steuben v. Abbott Labs., et al.</i>)
<i>County of Cortland v. Abbott Labs., et al.</i>	)	(W.D.N.Y. Case No. 05-CV-6223))
(N.D.N.Y. No. 05-CV-00881)	)	<i>County of Wyoming v. Abbott Labs., et al.</i>)
<i>County of Ulster v. Abbott Labs., et al.</i>	)	(W.D.N.Y. Case No. 05-CV-6379))
(N.D.N.Y. Case No. 06-CV-0123)))

WHEREAS Defendant Merck Sharp & Dohme Corporation, f/k/a Merck & Co., Inc., (“Merck”) has sought discovery relating to the receipt of Average Manufacturer Price (“AMP”) data by the New York EPIC Program for the Merck drugs listed in Revised Exhibit B-24 to Plaintiffs’ First Amended Consolidated Complaint; and

WHEREAS the New York EPIC Program has stated that producing the requested discovery would be unduly burdensome;

WHEREAS Merck and Plaintiffs wish to enter into a stipulation in the interests of avoiding a discovery dispute regarding the receipt of AMP data by EPIC;

WHEREFORE Merck and Plaintiffs, by their respective attorneys, hereby stipulate and agree, for the purposes of these cases only, as follows:

1. The New York EPIC Program has received Average Manufacturer Prices (“AMPs”) from certain prescription drug manufacturers, including defendants in the case styled *City of New York, et al. v. Abbott Labs., Inc., et al.* (MDL 1456). The EPIC Rebate Agreement instructs manufacturers to certify “that Average Manufacturer Price (AMP), Best Price and Baseline AMP data reported to EPIC are identical to the data reported to the Centers for Medicare and Medicaid Services under Section 1927 of the Federal Social Security Act, if the Manufacturer is required to report such data to the Centers for Medicare and Medicaid Services.”
2. Merck reported AMPs to EPIC, at a minimum, on a quarterly basis throughout the time period at issue in this case (1991 forward or from launch where a drug was launched after 1991) for all Merck drugs at issue in this case.
3. Merck reserves the right to establish through affirmative evidence that it reported AMPs to EPIC for drugs and time periods beyond those stipulated by Plaintiffs in paragraph 2 above.
4. This stipulation is solely for the purpose of identifying those drugs for which AMP data were provided to EPIC, and it does not constitute an admission by any party that the NDCs identified in Revised Exhibit B-24 to Plaintiffs’ First Amended Consolidated Complaint are properly at issue in this litigation or otherwise

properly attributed to the listed defendant manufacturer, or that the appropriate time period for this litigation is 1991 forward.

Respectfully submitted,

Dated: March 30, 2010
City of New York and New York
Counties in MDL 1456 except Nassau
and Orange

Merck Sharp & Dohme Corporation, f/k/a Merck &
Co., Inc.

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Certificate of Service

I, Robert B. Funkhouser, hereby certify that on this 30th day of March, 2010, a true and correct copy of the foregoing Stipulation Regarding the New York EPIC Program's Receipt of AMP Data was served on all counsel of record by LexisNexis File & Serve pursuant to Paragraph 11 of Case Management Order No. 2.

/s/ Robert B. Funkhouser
Robert B. Funkhouser